

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL SIDE APPELLATE JURISDICTION

WRIT PETITION NO. 1421 OF 2021

- | | | | |
|---|-------------------------------------|---|----------------|
| 1 | Akshay Padmakar Naik |] | |
| | Age 34 years, Occupation: Service |] | |
| | Resident of: Shardashram Society, |] | |
| | E/6, Bhawani Shankar Road, |] | |
| | Dadar (W), Mumbai 400 028. |] | |
| | Maharashtra |] | |
| 2 | Purva Padmakar Naik |] | |
| | Age 60 years, Occupation: Housewife |] | |
| | Resident of: Shardashram Society, |] | |
| | E/6, Bhawani Shankar Road, |] | |
| | Dadar (W), Mumbai 400 028. |] | |
| | Maharashtra |] | |
| 3 | Isha Naik |] | |
| | Age 26 years, Occupation: Service | } | |
| | Resident of: Shardashram Society, |] | |
| | E/6, Bhawani Shankar Road, |] | |
| | Dadar (W), Mumbai 400 028. |] | |
| | Maharashtra |] | .. Petitioners |

v/s.

- | | | | |
|---|--|---|-----------------|
| 1 | The State of Maharashtra |] | |
| | (Through Dadar Police Station |] | |
| 2 | Swapnalee Akshay Naik |] | |
| | 101, Avsekar Residency, Ganesh Peth Lane |] | |
| | Near Shivaji Mandir, Dadar (West) |] | |
| | Mumbai 400 028. |] | .. Respondents. |

Mr. Bharat Bhatia i/b. Ms. Ankita Phadke, for the Petitioners.

Smt. M. H. Mhatre, APP for Respondent No.1-State.

Ms. Trupti Chavan i/b. Mr. Pradeep Chavan & Associates, for Respondent No.2.

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**CORAM: NITIN W. SAMBRE &
ANIL L. PANSARE,JJ.
DATED : 17th MAY, 2022.**

ORAL JUDGMENT (PER ANIL PANSARE,J.)

Heard Mr. Bharat Bhatia, the learned Counsel for Petitioners, Smt. M. H. Mhatre, the learned APP for Respondent No.1-State and Ms. Trupti Chavan, for Respondent No.2.

2 **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3 The Applicants/Petitioners have filed a Petition, seeking directions for quashing of First Information Report bearing CR No. 239 of 2020 dated 3rd August, 2020 registered with Dadar Police Station for the offences punishable under Section 498-A,406 read with 34 of Indian Penal Code, 1860.

4 The Petition has been circulated before the Vacation bench on the ground that, the matter has now been settled between the parties and that Divorce Petition by mutual consent bearing No.862 of 2022 has been filed in Family Court. The Petitioner No.3 is a permanent resident of Canada and due for Citizenship Oath. The present FIR would operate as fly ban on the Applicants to travel abroad. Accordingly, the Petitioners and Original Complainant-Respondent No.2 have settled the matter and urged that the FIR lodged against Petitioners may be quashed.

5 Respondent No.2 who is present in the Court has tendered affidavit, mentioning therein that FIR came to be registered because of matrimonial dispute that arose between Respondent No.2 and the

Petitioners. According to Respondent No.2, the parties have amicably settled the disputes and have decided to take a divorce by mutual consent. Necessary Petition has already been filed before the Family Court. Parties have filed consent terms before the Family Court wherein Respondent No.2 has given consent to quash the case pending before the Metropolitan Magistrate Court at Dadar. Respondent No.2 has further stated in her affidavit that she has received an amount of Rs.25 lakhs from the Petitioner No.1 towards her permanent alimony and that there is no exchange pending between the parties. Respondent No.2, therefore, do not wish to pursue the proceeding that arose out of the FIR registered with Dadar Police Station against the Petitioners. Petitioner No.1 is husband of Respondent No.2. Petitioner No.2 is mother-in-law of Respondent No.2 and Petitioner No.3 is sister of Petitioner No.1.

6 We have interacted with Respondent No.2. She has admitted the contents of the affidavit which has been referred to herein above. Advocate for the parties before us would submit that matter has been amicably settled and, therefore, FIR registered against the Petitioners may be quashed and set aside.

7 The Hon'ble Supreme Court in the case of ***State of Madhya Pradesh v/s. Laxmi Narayan and Others (Criminal Appeal No.349 of 2019)***, while dealing with the power of High Court under Section 482 of the Criminal Procedure Code has been pleased to summarize the law in paragraph 13 on the point of quashing of FIR where the complainant has entered into compromise with the accused. Paragraph 13 reads thus:-

i) that the power conferred under [Section 482](#) of the Code to quash the criminal proceedings for the non-compoundable offences under [Section 320](#) of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under [Section 307](#) IPC and the [Arms Act](#) etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under [Section 307](#) IPC and/or the [Arms Act](#) etc. which have a serious impact on the society cannot be quashed in exercise of powers under [Section 482](#) of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is

not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under [Section 482](#) of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

8 Having considered the material placed before us in the backdrop of the above ruling and having heard both the sides, it is quiet obvious that the present dispute arises out of matrimonial relationship. The dispute is private in nature and has no serious impact on the society. The parties intend to put to rest the disputes and difficulties that arose out of marital relations and to live peaceful life henceforth. The Respondent No.1 – State of Maharashtra has not placed on record any material to show that the Petitioners have any criminal antecedents. The settlement arrived at between the parties appears to be genuine. In the circumstances, it would be in the interest of justice that the settlement arrived at between the parties, is given effect to.

9 At the same time, cost is required to be saddled on the Petitioners and the Respondent No.2 for using the police and judicial mechanism for settling their personal disputes.

10 Accordingly and taking aid of the judgment in the case of State of Madhya Pradesh (supra), we proceed to pass following order:-

- (i) The FIR bearing CR No. 239 of 2020 dated 3rd August, 2020 registered with Dadar Police Station for the offences punishable under Section 498-a, 406 read with 34 of Indian Penal Code, 1860 is hereby quashed and set aside, subject to cost as follows.
- (ii) The Petitioners and Respondent No.2 shall pay costs of Rs.10,000/- (Rupees Ten Thousand only) proportionately to Mumbai Police Welfare Fund. Receipt thereof be produced before the Court within four weeks from today.
- (iii) The Petition is disposed off in terms of above.

(ANIL L. PANSARE,J.)

(NITIN W. SAMBRE,J.)